IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Revision No. 34 of 2006.

Date of Decision: August 17, 2006.

Devta Satya Narain & another …Petitioners.

Versus

Lal Chand and others … Respondents.

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]?

For the petitioners: Mr. Kuldip Singh Kanwar, Sr. Advocate, with Mr. Bimal Gupta, Advocate.

For the respondents: Mr. K.D.Sood, Advocate.

V.K.Gupta, C.J. (Oral)

The short point involved for consideration in this Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 20.2.2006, passed by the learned Civil Judge (Senior Division), Lahaul Spiti at Kullu, relates to the interpretation to be placed upon the second proviso to Sub-Section (iv), read with clause (e) of sub section (v), of section 7 of the Himachal Pradesh Court Fee Act, 1968 (for short "1968 H.P. Act").

The facts, in brief, may be stated as under:

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Petitioners – plaintiffs filed a suit for declaration to the effect that 8 heads of property categorized (A) to (H) are owned and possessed by *Devta Satya Narain,* petitioner No. 1, who is the family deity of petitioner – plaintiff No. 2 and respondent – defendant No. 1 Lal Chand. In the suit, petitioners – plaintiffs also sought a further declaration that a perpetual lease executed by respondent - defendant No. 1 concerning half share of the land in categories (A) & (B), 1/4th share of the land in category (C), half share of the land in category (D) and the property in categories (E), (F), (G) and (H) in favour of respondents 2 and 3, be declared to be illegal, null and void, without authority and not binding on the petitioners – plaintiffs and that this perpetual lease deed confers no right, title or interest upon respondents 2 and 3 with respect to the aforesaid property and all the revenue entries showing respondents 2 and 3 as the perpetual lessees of this property are illegal, void, of no effect or consequence and are not at all binding upon the parties. A consequential relief in the nature of an injunction was also claimed in the suit whereby respondents 2 and 3 were ordered to be restrained from interfering in the ownership and possession of the petitioners with respect to the management of the aforesaid property by petitioner No. 2 in his capacity as *Kardar* / manager. For ready

reference and for facility of easy understanding of the import of the issue involved, I reproduce hereinbelow the relevant extracts of the prayer part of the aforesaid plaint, of course shorn of all unnecessary details. It reads thus:

> **" Suit for declaration to the effect that the property of the following description:**
>
> **(A) to (H) .....**
>
> **is owned and possessed by Devta Satya Narain plaintiff, family deity of plaintiff No. 2 and defendant No. 1 having its temple / Sathan at Dibha – Age in the house of plaintiff No. 2.**
>
> **IT MAY FURTHER BE DECLARED THAT**
>
> **THE PATTA DWAM (perpetual lease) executed by defendant No. 1 concerning half share of the land detailed in Head Note A, B and ¼ share of the land noted in Head Note (C) and ½ share of the land noted in Head Note (D) and property noted in Head Note (E), (F), (G) and(H), in favour of defendant Nos. 2 and 3 may be declared to be illegal, null and void, without authority and not binding on the plaintiffs and the same may be declared to be of no consequence and effect,**
>
> **IT MAY STILL FURTHER BE DECLARED THAT the aforesaid perpetual lease deed dated and registered on 27.12.1999 confers no right, title and interest on defendants 2 and 3 and the revenue entries showing defendants 2 and 3 as perpetual lessee are also illegal, void, of no effect and consequence and not binding on the plaintiffs.**

IT MAY STILL FURTHER BE DECLARED THAT mutation No. 6021 phati Nathan, Kothi Nagar; mutation No. 2545 phati Katrain and mutation No. 5910 phati Nagar attested on the basis of aforesaid illegal perpetual lease deed are illegal, void and inoperative and the plaintiffs are not bound by the same,

AS A CONSEQUENTIAL RELIEF DEFENDANT NO. 2 and 3 may be restrained from interfering in the ownership and possession of plaintiffs No. 1 and management of the aforesaid property by plaintiff No. 2 as Kardar / manager by way of issuance of permanent prohibitory injunction."

The defendants in the suit, in the written statements filed by them, raised objection about the improper valuation of the suit for the purposes of court fee and jurisdiction and based upon such objection issue No. 8 was framed by the trial Court for adjudication, which reads thus:

> "Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD"

Oral as well as documentary evidence was led in support of this issue by the respondents – defendants. The petitioners – plaintiffs did not lead any evidence, oral or documentary. The trial Court, by reference to the provisions of 1968 H.P. Act, held that the suit ought to have been valued for the purposes of court fee and jurisdiction in accordance

with the market value of the property and since it was not done, the petitioners - plaintiffs were directed to correct the valuation of the suit and pay deficient court fee within 30 days from the date of the passing of the order. Based upon the appreciation of the evidence led by the respondents - defendants in the suit, which was not rebutted in any manner by the petitioners – plaintiffs, the learned trial Court assessed the market value of the disputed half share of the property (with which the petitioners were concerned) at Rs.1,36,59,248/-. Aggrieved, the petitioners have challenged the impugned Order by filing the present Revision Petition.

Clause (c) of sub section (iv) of Section 7 of 1968 H.P. Act reads thus:

> **" for a declaratory decree and consequential relief; to obtain a declaratory decree or order, where consequential relief is prayed;"**

Sub – Section (iv) (supra) also provides that in all suits falling under clause (c) (supra), plaintiff shall state the amount at which he values the relief sought. Second proviso to sub section (iv) reads thus:

> **"Provided further that in suit coming under sub clause (c), in case where the relief sought is with reference to any**

property such valuation shall not be less than the value of the property calculated in the manner provided for by paragraph (v) of this section;"

Sub section (v) of Section 7 of 1968 H.P. Act reads as under:

"for possession of land, houses and gardens; In suits for the possession of land, houses and gardens- according to the value of the subject matter and such value shall be deemed to be –

where the subject matter is land, and –

(a) to (d)…….

(e) for houses and gardens; Where the subject matter is house or garden – according to the market value of the house or garden;"

Almost the entire section 7 of 1968 H.P. Act is in peri materia to the Central Court Fee Act, 1870, except that the second proviso to sub section (iv) is absent in the Central Act. The Central Act, therefore, does not have any provision identical or similar to the second proviso obtaining in 1968 H.P. Act.

The point for consideration by this Court in the present petition, therefore, boils down to this:

'In view of the second proviso to sub section (iv) of section 7 of 1968 H.P. Act (which is absent in the Central Act) in suits falling under clause (c) (supra), is it open to a plaintiff to

value the suit if the relief sought is with reference to any property, in a manner other than provided in clause (v) of Section 7? In other words, is it open to a plaintiff in such a suit to fix the valuation of the suit other than based on the market value of the house or houses which are the subject matter of the suit?

Mr. Kuldip Singh, learned Senior counsel appearing for the petitioners submitted that I should not look at the frame of the suit only, but should go deeper into the substance of the plaint and by adopting this approach, I would find that the petitioners ' relief is restricted to only the challenge to a lease deed and there is nothing in the plaint relating to the property as such and the challenge being confined to a lease deed, the suit was properly valued based upon the annual rental of the property, i.e. Rs.1200/- per annum. In support of this contention, Mr. Kuldip Singh has relied upon two Single Bench judgments of Punjab High Court and Delhi High Court. His main reliance of course is upon the Single Bench judgment of Punjab High Court in the case of *Ram Kanwar Kidarmal and others v. Naurang Rai Kundan Lal and others,* reported in AIR 1956 Punjab 251. The Single Bench Delhi High Court judgment in the case of *Union of India through Chief Commissioner Delhi State Vs. Sir Sobha Singh and Sons (P) Ltd.,* reported in ILR (1969) Delhi 120 merely, in turn, relies upon the ratio in the aforesaid Punjab

High Court judgment. Punjab High Court judgment in the case of *Ram Kanwar Kidarmal and others v. Naurang Rai Kundan Lal and others* (supra), has construed the phrase "with reference to any property" occurring in an identical proviso in the Central Court Fees Act brought about by the Punjab Court Fees (Punjab Amandment) Act, 1953 as indicating and describing an interest which a person has in the property. By adopting this construction to the said proviso, the learned Single Judge of Punjab High Court in the aforesaid judgment was of the opinion that the word 'property' as occurring in the proviso should be construed to have been used in the sense of a right in the property and because the rights were in the nature of lease hold rights, court fee should be paid on the lease hold rights and not on the market value of the immovable property which might be the subject matter of the lease itself.

To quote the learned Judge himself, I reproduce hereinbelow the following observation in the aforesaid judgment which reads thus:

> **"It appears to me difficult to hold that this was the intention of the legislature. The legislature could not be imputed with the intention that court fee should be paid on full market value of the immovable property irrespective of the nature of the right involved in the litigation. The word "property" is not a term of art and strictly speaking means only the right which a person has in relation to**

something. The word "property" ordinarily indicates and describes an interest which a person has in something. It is also frequently used to denote the thing in relation to which the right of property exists.

The only proper way to construe the phrase "with reference to any property" in the proviso is to construe it as indicating and describing an interest which a person has in the thing. Moreover, Cl. (v) of S. 7 does not deal with value of movable property but a suit relating to movable property can also be governed by S. 7 (iv) (c), Court Fees act. In such a case then the proviso does not lay down any test for computation of the value of the property.

To hold that the word "property" in the Punjab Amendment relates only to immovable property and not to rights in movable or immovable property will be not only unjust but also inconvenient. I am, therefore, of the opinion that the word "property" in this amendment is used in the sense of a right in the property involved in the case. In the present case lease rights are involved which admittedly are property and therefore court fee must be paid on these rights and not on the market value of the immovable property which is the subject of the lease."

With utmost deference and highest respect, I do not agree with the aforesaid proposition of law, because I have failed to persuade myself to subscribe to the aforesaid view in the face of unambiguous and plain language employed in the second proviso (supra), as well as in clause (e) of sub section (v) of Section 7 (supra). By providing in the second

proviso that if a plaintiff files a suit falling under clause (c) and if in such a suit the relief sought is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided in sub-section (v). Whereas the learned Single Judge in the aforesaid Punjab judgment did give, assign and apply some meaning to the expression "with reference to any property", he did not at all consider clause (e) of sub section (v) which was of utmost importance by placing a combined interpretation upon the second proviso and clause (e) together, because any isolated reading of second proviso, without referring to clause (e) would not have reflected the true legislative intent.

Clause (e) clearly states that where the subject matter of a suit is a house or a garden, the value of the suit shall be the market value of the house and plot. The expression "market value of the house and garden" is unambiguous, because on its plain reading the legislative intent clearly becomes immediately discernible and that is, that in any suit filed or falling under clause (c) (supra), where the relief sought is with reference to any property, the suit has to be valued on the basis of the market value of the property. Howsoever one wishes, one cannot get out of this binding effect of the expression "market value of the house or garden" used

in clause (e) (supra). I am, therefore, of the clear opinion that on a plain but combined reading of the second proviso and clause (e) (supra), whenever a suit is filed which falls under clause (c) (supra), and if the relief sought is with reference to any property, the suit has to be valued for the purposes of court fee and jurisdiction at the market value of the property and not otherwise. It is not open to any plaintiff in any such suit to value the suit differently.

Applying the aforesaid principle to the facts of the present case, Mr. Kuldip Singh's contention cannot be accepted, because a bare look at the cause title of the plaint, as well as its prayer part leaves no manner of any doubt that the petitioners- plaintiffs were not only seeking a declaratory relief qua the lease hold rights or qua the execution of a lease, but they were also seeking declaratory reliefs qua their own rights in the property concerned. The petitioners- plaintiffs were seeking the declaratory reliefs about their ownership as well as possession to the extent of their ½ share in the property and also the relief that the mutations entered with respect to the property based upon the lease deed be declared as null and void, illegal etc. etc. The frame of the suit of course has to be in conformity with the substance of the plaint. There cannot be any quarrel to this proposition of

law. If the frame of the suit as well as the substance of the plaint are read together, the inescapable conclusion which emerges in the present case is that the suit filed by the petitioners - plaintiffs was with reference to the property and the plaintiffs had no option but to value the suit for the purposes of court fee and jurisdiction in accordance with the market value of the property.

In the result, I find that the learned trial Court did not commit any error in passing the impugned order.

The petition is dismissed. No order as to costs.

CMP 115 of 2006

Dismissed.

August 17, 2006. **(V.K.Gupta)**
(PC). **Chief Justice.**